

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

STERLING RAHEEM JULES

PLAINTIFF

v.

CIVIL ACTION NO. 1:15-cv-0315-RHW

EVAN HUBBARD, ET AL.

DEFENDANTS

**MOTION TO DISMISS FOR FAILURE TO PROSECUTE, OR IN THE
ALTERNATIVE, TO SHOW CAUSE FOR FAILURE TO
COMPLY WITH THE COURT ORDER**

COME NOW Defendants, Margaret Willis, Chelse Alford, Nathan Ellsberry, Phillip Mitchell, Barbara Parker, Justin Richards, Beth Victoriano, Patricia Pickens, Raffee McLaughlin, Anthony Krause, Jeffrey Frye, Eric Tarpley, Evan Hubbard, Elaine Lege, and Daniel Norris, by and through their attorneys of record and hereby file this their Motion to Dismiss for Failure to Prosecute, or in the Alternative, to Show Cause for Failure to Comply with the Court Order on behalf of Defendants and would state the following, to-wit:

I.

On June 7, 2016, Defendants herein propounded discovery [DN 55, 56 and 57] to the Plaintiff in accordance with the discovery deadline set by this Court of August 6, 2016.

II.

On July 21, 2016, Defendants herein sent a Good Faith letter and Certificate to Plaintiff in an effort to resolve the discovery issue and, simultaneously, filed a Motion to extend discovery and motion deadlines [DN 58]. On July 22, 2016, the Court entered an Order granting Defendants'

Motion, resetting the discovery deadline to October 6, 2016.

III.

On August 16, 2016, Defendants filed their Motion to Compel **[DN 59]** and the Court entered an Order on August 22, 2016, granting Defendants' Motion and ordering Plaintiff to supply all outstanding discovery responses no later than September 12, 2016. To date, Plaintiff has failed to comply with the Order of the Court.

IV.

Federal Rules of Civil Procedure 41(b) provides that a plaintiff's claim may be involuntarily dismissed, "[i]f the Plaintiff fails to prosecute or comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it." Plaintiff has failed to prosecute his claim and to comply with the Court's Order instructing him to provide outstanding responses to Defendants' discovery requests. Plaintiff's failure to abide by the Court's Order requires that the case against these Defendants be dismissed pursuant to Fed. R. Civ. P. 41(b).

V.

The Defendants have been prejudiced by the Plaintiff's dilatory actions and have been unable to proceed with the defense of this case. Plaintiff has made no attempt to comply with this Court's Order. Plaintiff's failure to produce written discovery responses has severely prejudiced the Defendants' abilities to prepare and defend this matter, especially considering the initial discovery deadline has passed, and the extended discovery deadline and motion deadline are rapidly approaching.

VI.

In accordance with Rule 41(b) of the Fed. R. of Civ. P., these Defendants request that this Honorable Court dismiss this matter for Want of Prosecution in light of Plaintiff's failure to comply with the Court's Order.

VII.

In the alternative, Defendants request this Court to issue an Order requiring Plaintiff to show cause why he has failed to comply with the Court's Order entered on August 22, 2016. [DN 60]

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the Court find that their Motion to Dismiss for Failure to Prosecute, or in the Alternative, to Show Cause for Failure to Comply with Court Order is well taken, and hereby move this Court to enter its Order of Involuntary Dismissal pursuant to Rule 41(b), dismissing Plaintiff's Complaint with prejudice for failure to prosecute. Defendants further request any and all such other and additional relief to which they may be entitled under the circumstances.

RESPECTFULLY SUBMITTED, this the 15th day of September, 2016.

EVAN HUBBARD, ET AL., Defendants

BY: DUKES, DUKES, KEATING & FANCA, P.A.

BY: s/ Haley N. Broom
HALEY N. BROOM

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this day electronically filed with the Clerk of the Court using the ECF system which sent notification via electronic mail and/or United States Mail of such filing to the following:

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This, the 15th day of September, 2016.

/s/ Haley N. Broom
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